IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.Rev.Pet.No. 745 of 1998()

CRA.123/1995 of SESSIONS COURT, KOZHIKOE

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REVN. PETITIONER(S):

KULAMANAKUZHIYIL JOSE,
S/O.MATHAI, KINALOOR AMSOM AND DESOM,
VAYALIDA, KOZHIKODE DIST.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S):

THE SUB INSPECTOR OF POLICE,
BALUSSERY REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.R.P.NO.745 of 1998

Dated this the 2nd day of March, 2007

O R D E R

The revision petitioner was convicted and sentenced under Section 324 IPC to undergo simple imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo simple imprisonment for a further period of three months. Rs.1000/-, if realised, shall be paid to PW1 as compensation.

2. In appeal, learned Sessions Judge confirmed the conviction, but it was found that the offence committed is one falling under Section 323 IPC and therefore, the sentence was modified to undergo simple imprisonment for a period of three months under Section 323 IPC. The said conviction and sentence are challenged in this revision.

3. According to the prosecution, on 10.2.1992 at about 7.30 p.m when there was a push and pull between the accused and PW4 Jyothi, PW1 interfered in the matter. Being aggrieved by the interference of PW1, the accused attacked PW1 with a stone on his face. He sustained injuries. Accused was charge sheeted for offence under Section 324 IPC. The prosecution has examined PW1 to PW8 and marked Exhibits P1 to P5 to prove its case. The trial court found that the evidence adduced by the prosecution proves its case. But the lower appellate court found that there is no evidence regarding the nature of weapon and hence the conviction

was altered to one under Section 323 IPC.

4. Learned counsel for the revision petitioner strongly contended that the evidence of PW1 cannot be believed, since the incident was happened in an arrack shop and that PW1 was in a drunken stage on that day and he had fallen down and sustained injuries. But utilising the injuries, the accused was falsely implicated by PW1 and that this is a false case. To support this argument, reliance was placed on the evidence adduced in this case which reveals that the place of occurrence is the premises of an arrack shop. It was also argued that PW2 who is the brother-in-law stated that PW1 used to drink. Therefore, it has to be inferred that PW1 was drunk on that day and fallen down, it is contended.

5. On going through the evidence, it cannot be said that PW1 was drunk on the date of occurrence. Only because the incident happened near an arrack shop, no inference can be made that PW1 was in a drunken state. The incident happened at 7.30 p.m and that PW1 was admitted in the hospital on the same day. He was examined by PW7, the doctor. There is nothing in the medical evidence to show that PW1 was atleast smelling alcohol and no symptom of drinking was noted by the doctor at the time of examination of PW1 within a few hours of the incident in the same night. It is also to be noted that though PW2 stated that PW1 drinks occasionally, he stated that he had not consumed liquor on the particular day. In such circumstances, I cannot accept the argument that PW1 was

drunk and the incident happened because of his inability to control himself.

6. Learned counsel for the revision petitioner also argued that the medical evidence would strongly indicate that the injuries were all on one particular side and the injury sustained would be caused by fall. Therefore, learned counsel for the revision petitioner wants this court to infer that the injuries were sustained in a fall. It is pointed out that this aspect was not considered by the court below. On an analysis of the medical evidence and the nature of injury, I only reject the argument. The medical records reveal that the argument that the injuries were spread all over the face on the left side can only be treated as an exaggerated submission which is not supported by the evidence in this case.

7. PW7 deposed in evidence that there were two injuries on PW1. Both are on the face. One is a lacerated wound 2 x ½ x ½ c.m. above the left eyebrow, which cannot be said to be an injury which is extensive in nature. The second injury is abrasion on the left cheek, in respect of which the measurement is not shown. It has not been brought out from the evidence of PW7 that the said injury covers an extensive area. At any rate, there is no evidence to indicate that the injury sustained by PW1 was spread over the whole face as contended. It is also argued that PW7, the doctor admitted that the injury could be caused in a fall. But the evidence of the same witness would also shows that the injuries can be

caused as alleged.

8. The allegation made to the doctor is that the injuries were caused by hitting a stone is corroborated by the evidence of PW7. But the case of a fall is not revealed from the evidence or any circumstance in this case. Therefore, the argument can also be rejected. Both the courts below analysed the evidence adduced in this case and found that the version given by PW1 is believable. His evidence is supported the evidence of PW2 who is an eye witness to the occurrence. He narrated the incident. But it was pointed out that there are some exaggeration in the evidence of PW2 that PW1 sustained an injury on the head and the chest and a stone was shown by him etc. But these types of exaggerations will not be sufficient to discard the evidence of a witness in toto. In any case, it is likely that some embellishments will be present in the version given by an injured or an eye witness. But that by itself is insufficient to discard the entire prosecution case.

9. Learned counsel for the revision petitioner submitted that 15 years have elapsed after the incident and the petitioner has not involved in any other crime. Therefore a lenient view may be taken in imposing the sentence. It is also submitted that petitioner is prepared to compensate the injured by paying Rs.5,000/- as compensation under Section 357(3) of the Code. On hearing both sides, on the facts and circumstances of the case and considering the circumstances of the accused, long pendency of

the proceedings, I find that sending the petitioner to jail may not serve much purpose. Instead, he can be directed to pay compensation, which will be an adequate measure to be adopted.

10. Hence conviction under Section 323 IPC is confirmed, but the sentence is modified as follows: The revision petitioner is sentenced to undergo imprisonment till the rising of the court and to pay or deposit compensation of Rs.5,000/- to PW1. In default of payment of compensation, he shall also undergo simple imprisonment for three months.

The Revision petition is allowed.

K.HEMA, JUDGE

vgs.